



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/754,065	01/07/2004	Michael Principe	IR 7419-01	6521
23909	7590	09/22/2006	EXAMINER	
COLGATE-PALMOLIVE COMPANY			ROBERTS, LEZAH	
909 RIVER ROAD			ART UNIT	PAPER NUMBER
PISCATAWAY, NJ 08855			1614	

DATE MAILED: 09/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

TH

Office Action Summary	Application No. 10/754,065	Applicant(s) PRENCIPE ET AL.	
	Examiner Lezah W. Roberts	Art Unit 1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) 1-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-21 and 23-25 is/are rejected.
- 7) ☒ Claim(s) 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to the Amendment filed July 5, 2006. All rejections have been withdrawn unless stated below.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims

Claim Objections

Claim 18 is objected to because of the following informalities: the term "hydrophilic" is spelled incorrectly and should be spelled "hydrophobic". Appropriate correction is required.

Claim Rejections - 35 USC § 103 - Obviousness

1) Claims 15-19 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu et al. (WO 01/01939) in view of Chen (US 2003/0129148). The rejection is maintained.

Applicant argues Yue et al. has contemplated several different ways of applying the oral care composition of the reference. Yue never discloses using a dental tray. Yue actually teaches away from using a dental tray because Yue teaches that the oral care substance can be applied to any surface in the oral cavity and the use of a dental tray would prevent the application of the oral care substance to surfaces other than teeth. Applicant further argues Chen only discloses water-soluble agents and does not

Art Unit: 1614

suggest using a not-water soluble material. Furthermore, there is no motivation to combine Yue and Chen because Yue teaches the application of the oral care substance to the entire oral cavity. This argument is not persuasive.

Yue et al. teach primarily applying the compositions of the reference to the surface of the teeth, although it also teaches oral care active may be delivered to the entire oral cavity using the polymer system. In the case of the peroxides used, they are for disclosed as being used for bleaching the teeth not for treatment of the entire oral cavity. Although Chen teaches hydrophilic polymers, it also teaches high concentrations of peroxides are painfully irritating to soft tissue, causing serious discomfort to a patient. Therefore, it would be obvious to limit peroxides to the tooth surface and not the surrounding tissue, such as the gums and the oral mucosa. A barrier of some sort would be needed to inhibit the peroxide from touching the tissue when the peroxide comprising compositions are applied and the mouth is closed. This would motivate one of ordinary skill in the art to use a dental tray when applying peroxide compositions of the primary reference. The primary reference does not have to disclose the use of a dental tray because it is not an Anticipation rejection under 35 U.S.C. 102. Under 35 U.S.C. 103, there only needs to be motivation to combine the two references, which is given by the secondary reference's teaching of protecting the oral mucosa from the harmful effects of high concentrations of peroxides.

2) Claims 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu et al. (WO 01/01939) in view of Chen (US 2003/0129148) as applied to claims 15-19

Art Unit: 1614

and 20-21 above, and further in view of Pfister et al. (US 5,232,702). The rejection is maintained.

Applicant argues that claim 17 is patentable over the cited references therefore claims 23-25 are patentable. This argument is not persuasive.

Claim 17 does not appear to be patentable over the prior art therefore claims 23-25 are not patentable over the prior art.

3) Claims 15-21 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawlor (WO 02/34221) in view of Chen (US 2003/0129148).

Applicant argues the intent of Lawlor is not to confine the compositions to one area of the oral cavity. The reference describes several different solutions to increasing substantivity of dental care compositions. In all variations there is no contemplating of using a dental tray with the dental compositions. Applicant further argues Chen only discloses water-soluble agents and does not suggest using a not-water soluble material. Furthermore, there is no motivation to combine Lawlor and Chen because Lawlor teaches away from such a combination because the oral care substance may be applied to the entire oral cavity including the hard to reach places. This argument is not persuasive.

Lawlor teaches compositions to deliver oral care actives to the teeth or gums. The point of delivery is dependent on the oral care active. In the case of peroxides, they are used specifically to treat the surface of the teeth, because the reference specifically recites that the peroxides are used to remove stains from the teeth. Although Chen

Art Unit: 1614

teaches hydrophilic polymers, it also teaches high concentrations of peroxides are painfully irritating to soft tissue, causing serious discomfort to a patient. Therefore, it would be obvious to limit peroxides to the tooth surface and not the surrounding tissue, such as the gums and the oral mucosa. A barrier of some sort would be needed to inhibit the peroxide from touching the tissue when the peroxide comprising compositions are applied and the mouth is closed. This would motivate one of ordinary skill in the art to use a dental tray when applying peroxide compositions of the primary reference. The primary reference does not have to disclose the use of a dental tray because it is not an Anticipation rejection under 35 U.S.C. 102. Under 35 U.S.C. 103, there only needs to be motivation to combine the two references, which is given by the secondary reference's teaching of protecting the oral mucosa from the harmful effects of high concentrations of peroxides.

4) Claims 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawlor (WO 02/34221) in view of Chen (US 2003/0129148) as applied to claims 15-19 and 20-21 above, and further in view of Pfister et al. (US 5,232,702). The rejection is maintained.

Applicant argues that claim 17 is patentable over the cited references therefore claims 23-25 are patentable. This argument is not persuasive.

Claim 17 does not appear to be patentable over the prior art therefore claims 23-25 are not patentable over the prior art.

Art Unit: 1614

5) Claims 15-21 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawlor (WO 02/34221) in view of Allred et al. (US 6,860,736).

Refer to Applicant's arguments and the Examiner's response to the arguments for the primary reference in the Obviousness section subsection 3 supra.

In regards to the secondary reference, Applicant argues there is no showing that the subject matter relied on in Allred '736 has support in the parent applications. Furthermore, there is no motivation to combine Lawlor and Allred because Lawlor teaches away from such a combination because the oral care substance may be applied to the entire oral cavity including the hard to reach places. This argument is not persuasive.

In regards to Allred, the same subject matter may be found in Patent Application Publication 2004/0234929 (pages 1 and 2) and patent 7,040,897, filed May 23, 2003. Because Applicant arguments are based on Lawlor teaching away from using a dental tray when this is not the case the rejection is maintained.

Claims 15-21 and 23-25 are rejected.

No claims allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1614

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lezah W. Roberts whose telephone number is 571-272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

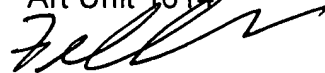
Art Unit: 1614

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lezah Roberts
Patent Examiner
Art Unit 1614

A handwritten signature in black ink, appearing to read "Leah Roberts", with a stylized flourish at the end.

Frederick Krass
Primary Examiner
Art Unit 1614

A handwritten signature in black ink, appearing to read "Frederick Krass", with a stylized flourish at the end.